

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	FCC 04-179
)	
Unbundled Access to Network Elements)	WC Docket No. 04-313
)	
Review of the Section 251 Unbundling)	
Obligations of Incumbent Local Exchange)	CC Docket No. 01-338
Carriers)	
)	

**COMMENTS OF THE VERMONT PUBLIC SERVICE DEPARTMENT ON NOTICE
OF PROPOSED RULEMAKING**

SUMMARY

The Vermont Department of Public Service focuses in these comments on the unbundled transport element and presents its understanding that competitive wholesale transport alternatives in Vermont are few in number and limited in geographic scope. A nationwide finding of non-impairment for unbundled transport would have serious adverse consequences for competition in telecommunications markets in Vermont. Accordingly, it urges the Commission to refrain from finding, or establishing a rebuttable presumption of, non-impairment without access to unbundled transport in small markets similar to Vermont.

TABLE OF CONTENTS

I. The Commission's nationwide findings of impairment from the <i>Triennial Review Order</i> were not challenged in Vermont.	2
II. Alternative transport networks in Vermont are limited in number and geographic scope at this time.	3
III. Lack of unbundled transport would likely impair competitors in Vermont, even those that have substantial facilities.	4
IV. Recommended decision with regard to the availability of unbundled transport.	6

I. THE COMMISSION'S NATIONWIDE FINDINGS OF IMPAIRMENT FROM THE *TRIENNIAL REVIEW ORDER* WERE NOT CHALLENGED IN VERMONT.

At paragraph 9 of the NPRM, the Commission seeks comments on how to establish new sustainable unbundling rules an account for market variability, and at paragraph 15, the Commission anticipates that parties may wish to submit large amounts of factual information from state commission proceedings initiated to implement the *Triennial Review Order*. The Vermont Public Service Department (VPSD) is the statutorily designated public advocate before Vermont's state commission, and it is the state agency responsible for telecommunications planning. It is independent of Vermont's state commission, but would have been a party to any proceeding before it on this issue. Vermont's state commission, the Vermont Public Service Board (VPSB or "Board"), did not conduct either a 90-day or a nine-month proceeding into whether facts in Vermont justified a finding other than the *Triennial Review Order*'s nationwide impairment findings on unbundled local switching, loops, and transport. On October 24, 2003, the VPSB issued a Memorandum requesting comments from Verizon-Vermont and CLECs on whether such a proceeding was needed in Vermont. Verizon-Vermont's reply of November 7, 2003 to the Board, indicated that it would not seek to demonstrate non-

impairment in Vermont for mass-market switching, loops, or transport at that time. (See Exhibit VPSD-1, Verizon's reply to the VPSB.)

Because the VPSB did not conduct a proceeding investigating impairment in Vermont, there is not a formal record to summarize in Vermont. That does not mean that the nationwide impairment findings issued by the FCC in the *Triennial Review Order* were factually incorrect in Vermont—simply that they were not challenged. In these comments, the VPSD summarizes its informal understanding of the state of competitive alternatives to Verizon transport facilities in Vermont and urges the FCC to establish a presumption that competition would be impaired in small markets such as Vermont absent CLEC access to interoffice facilities at TELRIC-based prices.

II. ALTERNATIVE TRANSPORT NETWORKS IN VERMONT ARE LIMITED IN NUMBER AND GEOGRAPHIC SCOPE AT THIS TIME.

The development of “middle mile” facilities in Vermont is a matter of ongoing interest to the VPSD. Because the number of companies controlling transport facilities in Vermont is relatively small, the VPSD is able to gather information about the extent and locations of interoffice transport facilities through informal communication with officers and employees of the CLECs that build and control these facilities. While not all CLECs have provided complete inventories of their Vermont interoffice transport facilities, the VPSD believes it has a relatively complete picture of the numbers and locations of CLEC-owned interoffice transport facilities in Vermont.

TelCove possesses the most extensive interoffice transport facilities of any non-incumbent carrier operating in Vermont. TelCove's network is summarized in attached Exhibit VPSD-2 (and is, as well, available on the Web). Verizon has 103 wire centers that serve Vermont; of those 103 wire centers, TelCove's network is connected to Verizon in just seven. A handful of other companies control alternative transport facilities in Vermont, but these networks connect to even fewer Verizon central offices than does TelCove's network. The principal function of these networks appears to be to provide greater access from Vermont to out-of-state locations, rather than to interconnect locations within Vermont. Accordingly, even in the most optimistic scenario, it would be unreasonable to conclude that CLEC-owned interoffice transport facilities exist between more than a small fraction of Verizon-Vermont wire centers. CLECs that wish to offer local phone service in Vermont must, in most instances, obtain interoffice transport facilities from Verizon. Further, on interoffice routes for which alternative providers exist, the number of transport providers is insufficient to create a fully competitive wholesale transport market.

III. LACK OF UNBUNDLED TRANSPORT WOULD LIKELY IMPAIR COMPETITORS IN VERMONT, EVEN THOSE THAT HAVE SUBSTANTIAL FACILITIES.

Without economic access to unbundled loops at Verizon central offices, competitors, especially those that serve the mass market, would be handicapped. Unbundled transport is an essential component of a CLEC's network, and access to transport facilities at reasonable wholesale prices is essential to the viability and

sustainability of a CLEC's business. Even companies that use their own facilities to provide service still require access to Verizon's unbundled transport to access loops in some or all of the Verizon exchanges they may seek to serve. For example, a CLEC that owns a switch, but not transport facilities, must rely on Verizon for transport facilities that extend to wire centers to which CLEC-owned transport facilities do not extend. A CLEC that controls interoffice transport facilities on a limited number of interoffice routes must rely on Verizon to transport traffic to and from wire centers to which only Verizon's facilities extend. A CLEC that uses its own electronics on unbundled dark fiber transport facilities must still have access to the dark fiber.

It is also important to note that unbundled transport connects large and small wire centers. Alternative transport facilities that are available between hypothetical large wire centers 'A' and 'B', but that do not connect to small wire center 'C', matter little to a carrier trying to connect 'A' with 'C.' At most, a handful of Verizon-Vermont wire centers might be characterized as "large"; Verizon provides roughly 498,000 access lines in 103 wire centers – an average of roughly 4,800 lines per center, even including the largest. It seems unlikely that any CLEC, let alone two or more, will find it economic to construct their own transport facilities to many of Vermont's small exchanges, and therefore access to Verizon's interoffice transport facilities at reasonable prices is essential to their ability to offer service at competitive rates.

**IV. RECOMMENDED DECISION WITH REGARD TO THE AVAILABILITY OF
UNBUNDLED TRANSPORT.**

It is difficult for the VPSD to advise the Commission about impairment in markets in other states. It may be reasonable for the Commission to adopt some form of access line count or density benchmark as a threshold for presuming that non-impairment with respect to dedicated interoffice transport. Calculating a proposed threshold is beyond the resources of the VPSD. However, we recommend and urge the Commission, if it adopts some form of benchmark or proxy indicator approach as a threshold for presuming non-impairment, to compare the predicted results against an actual census or sample of currently-existing alternative interoffice transport facilities. If the model or test would indicate that sufficient interoffice facility alternatives exist throughout Vermont, then it would be reasonable to conclude that the model or test is inaccurate. Any test that fails to distinguish transport routes in small markets (like those in Vermont) from those in large markets is inadequate. When there are few sets of physical facilities between wire centers controlled by multiple carriers (or only one), or when a transport route connects to at least one wire center having small numbers of lines, access to unbundled transport is critical to the development of competition. The Commission should avoid any overly broad nationwide findings of non-impairment for unbundled transport, as these would not square with the situation in small rural markets like Vermont.

Thank you for the opportunity to submit comments. We offer any assistance or information you find would useful in establishing new unbundling result, and we would welcome any questions or requests you may have.

October 4, 2004

Respectfully submitted,

/s/ Lawrence Lackey

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November 7, 2003

Exhibit VPSD-I ☐
WC Docket No. 04-313 ☐
CC Docket No. 01-338 ☐
Comments of VPSD re: FCC 04-179 ☐
October 4, 2004

VIA OVERNIGHT MAIL

Susan M. Hudson, Clerk
Vermont Public Service Board
112 State Street
Drawer 20
Montpelier, VT 05620-2701

Re: Triennial Review Order

Dear Ms. Hudson:

On October 24, 2003, the Vermont Public Service Board (the "Board") issued a Memorandum requesting comments by Verizon New England Inc. d/b/a Verizon Vermont ("Verizon Vermont") and competitive local exchange carriers ("CLECs") on whether the Board should initiate proceedings in connection with the Federal Communications Commission's ("FCC") *Triennial Review Order*.¹ Specifically, the Board asked for comments on: (i) whether it should commence a 90-day proceeding to determine if CLECs are impaired without access to unbundled local switching for "enterprise" customers, *i.e.*, those customers served by high-capacity loops; (ii) whether Verizon Vermont intends to ask the Board to conduct a nine-month proceeding relating to the FCC's impairment findings for mass market switching, loops, and transport; and (iii) whether there is a need for the Board to establish a batch hot-cut process within Vermont.

Please accept the original and six copies of this letter as the comments of Verizon Vermont.

¹ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking (rel. Aug. 21, 2003).

A. The Limited Role of State Commissions

As you know, in connection with its *Triennial Review Order*, the FCC assigned “some fact finding responsibilities” to state commissions and requested that they apply the FCC’s “federal guidelines” to certain network elements to determine whether they should be unbundled. *Triennial Review Order* ¶¶ 188 & 189. The FCC emphasized, however, that state commissions have authority neither “to create, modify or eliminate unbundling obligations” established by the FCC nor to “tak[e] actions under state law that conflict” with the FCC’s framework for determining the unbundling of network elements. *Id.* ¶¶ 187 & 196. Rather, it is incumbent upon state commissions to apply the impairment standards established by the FCC.

B. There is No Need for the Board to Initiate a 90-Day Proceeding

In its *Triennial Review Order*, the FCC established “a national finding that competitors are not impaired with respect to DS1 enterprise customers that are served using loops at the DS1 capacity and above.” *Triennial Review Order* ¶ 451. The FCC reached this conclusion because there are “few barriers to deploying competitive switches to service customers in the enterprise market at the DS1 capacity and above” *Id.* ¶ 451. A state commission cannot ignore or overturn the FCC’s conclusion. Instead, a state commission can only ask the FCC to waive its finding of no impairment; this waiver petition must be supported by specific facts, applied to economic and operational standards dictated by the FCC. *Id.* ¶ 455. These standards are the same ones that the FCC already applied when it made its finding of no impairment. Any waiver request – which can come only from a state commission – must be filed with the FCC within 90 days from the October 2, 2003 effective date of the *Triennial Review Order*, i.e., no later than December 31, 2003.

In Verizon’s entire footprint, it has provided *hundreds of thousands* of “high capacity” loops to CLECs, and of this number, *less than one percent* are being provided in conjunction with a Verizon switch. In Vermont, Verizon is currently providing approximately 195 DS1 and above UNE loops, but only **one high capacity loop is provided with Verizon Vermont switching** – a mere one-half of one percent. Remarkably, this minute percentage actually overstates the extent to which CLECs are using Verizon Vermont switches in conjunction with high-capacity loops, since it does not include any of the high-capacity loops that CLECs provide themselves and to each other.

There is a simple explanation for why CLECs are declining Verizon Vermont’s unbundled switching – they are using their own switches. The FCC concluded that there is “significant nationwide deployment of switches by competitive providers to serve the enterprise market” *Id.* ¶ 435. The FCC based this conclusion on the fact that CLECs “have deployed as much as 1,300 local circuit switches and are primarily utilizing these switches to serve enterprise customers.” *Id.* ¶ 421 n.1395. By any definition of the word, CLECs are not “impaired” without the use of Verizon Vermont’s switches for these high-capacity loops. Access to Verizon Vermont’s unbundled switches cannot be a barrier to entry in this market, since for virtually all of the loops that make up this market, CLECs have affirmatively *declined* to use a Verizon switch. Indeed, as noted above, only a miniscule number of high-capacity loops have been ordered from Verizon Vermont with the switching element. Thus, to the extent that high-

capacity loops *are* being used by CLECs in Vermont, they are already being used in conjunction with the CLECs' *own* switches. Under even the most permissive understanding of the term, there cannot be "impairment" without use of Verizon's switches under these circumstances.

The Board has asked CLECs to comment on the initiation of a 90-day case. Verizon Vermont has reserved its right to respond to any comments that are filed. However, the fact that certain CLECs may have an interest in using Verizon switching in the enterprise market is insufficient to rebut the FCC's finding of non-impairment in this market. The FCC has determined that it "cannot order unbundling merely because certain competitors or entrants with certain business plans are impaired." *Triennial Review Order* ¶ 115. ~~Nothing in the Triennial Review Order requires that the Board undertake a review here, and it should decline to do so~~ given that CLECs are already addressing this market via their own switches.

C. Verizon Vermont Will Not Seek to Demonstrate Non-Impairment in Vermont for Mass Market Switching, Loops, or Transport at this Time

Verizon believes that the FCC's unbundling standards are fundamentally at odds with the requirements of the Telecommunications Act of 1996. *See* 47 U.S.C. §§ 151-760. The FCC avoided the meaning and significance of certain facts – such as the existence of approximately 1,300 CLEC switches that are serving millions of local phone customers today – and instead adopted standards designed to ensure the continued availability of most UNEs, including the UNE Platform, in many markets in spite of those facts. Unless and until the FCC standards are corrected, it ~~does not appear that at the present time Verizon will be able to meet those standards~~ for some network elements in some states. Therefore, rather than impose on the limited resources of state commissions (as well as the limited resources of the company) in such situations, Verizon has made state-by-state determinations as to whether it will forego for now its challenge to the FCC's impairment findings for these network elements. Since the FCC's standards make it very difficult for Verizon Vermont to show non-impairment in the State for mass market switching, loops, and transport, ~~the company has determined that it will not challenge the FCC's impairment determinations at this time in Vermont.~~

D. No Examination of a Batch-Hot-Cut Process Is Required By The Board If Verizon Declines To Challenge Impairment for Mass Market Switching

The FCC has asked state commissions to carry out specific actions, including determining whether certain "triggers" have been satisfied, applying economic and operational impairment criteria, and reviewing an ILEC's batch hot-cut process. In particular, state commissions are asked to "identify where competing carriers are not impaired without unbundled switching, pursuant to the triggers and analysis of competitors' potential to deploy." *Triennial Review Order* ¶ 473 (emphasis added). Thus, each of these actions is moot if an incumbent Local Exchange Carrier ("ILEC"), like Verizon Vermont, decides not to contest impairment.

Among other things, a review of the batch hot cut process must be ILEC-specific in light of the fact that state commissions must "tak[e] into account the incumbent LEC's particular network design and cut over practices." 47 C.F.R. § 51.319(d)(2)(ii)(A)(2). Because this batch

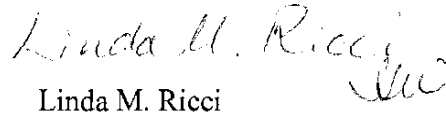
hot-cut review is one of the "specific actions designed to alleviate impairment," *Triennial Review Order* ¶ 460, for local switching for mass market customers, it is only relevant to the extent that the ILEC challenges application of the impairment finding for local switching in the state. ~~Because Verizon Vermont is not challenging the impairment finding in Vermont at this time, the switching unbundled network element in question – and the UNE platform – will remain~~ available in the State. If the UNE platform stays in place, there is ~~no need to establish a new hot cut process~~ to address increases in hot cut volume that might be generated by elimination of the UNE platform. Accordingly, the Board does not need to evaluate either the existence of an impairment or the desirability of a batch hot cut process in Verizon's territory.² 47 C.F.R. § 51.319(d)(2)(i) & (ii).

* * * *

In summary, Verizon Vermont hereby notifies the Board that it will not challenge the FCC's impairment determinations at this time – an outcome that will save the Board's and company's resources by eliminating the need for potentially extensive proceedings.

If you have any questions, please do not hesitate to contact me.

Very truly yours,


Linda M. Ricci

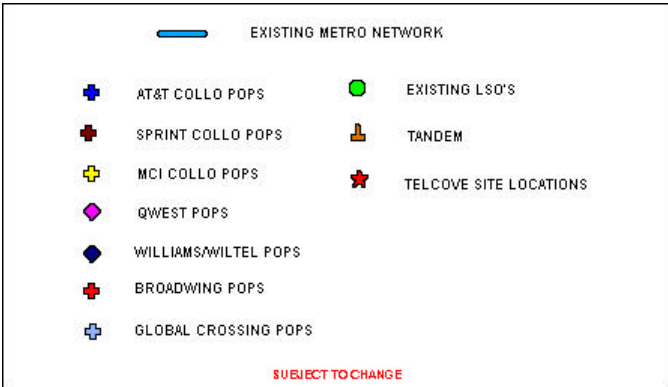
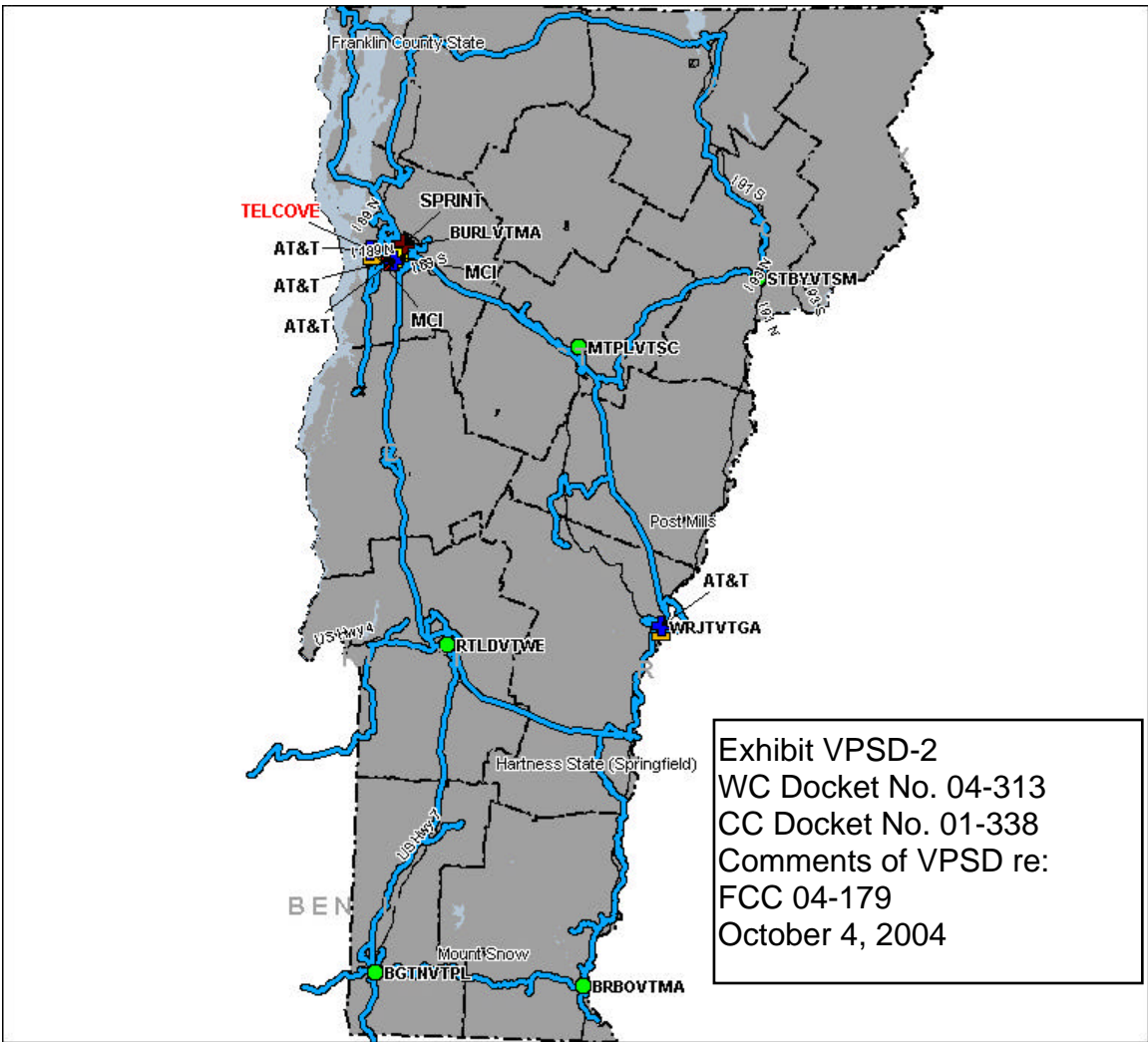
cc: Attached Service List

² A batch hot-cut process is simply not necessary in Vermont. Among other things, in stark contrast to the large volume of hot cuts contemplated by the FCC in the *Triennial Review Order*, Vermont CLECs place service order requests for hot cuts on a relatively infrequent basis. During the six months between April and September 2003, Verizon Vermont completed hot cuts on an average of approximately 75 lines per month. For this reason, the creation of a batch hot-cut process will neither prove more efficient nor reduce per-line hot-cut costs.



Local City Network Maps

TelCove Fiber Infrastructure - Burlington, Vermont



On-net Buildings Connected with Fiber & Equipment.....	331
IXC POPs Collocated.....	5
LEC COs Collocated.....	7
Total Route Miles of Fiber.....	1052